IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.Ch.SURYA RAO

WRIT PETITION NO : 19189 of 2004

Between:

M/s.Sri Guru Raghavendra Traders,

D.No.12-15-36, P.J.N.Road, Tarapet, Vijayawada,
rep.by its partner Sri. S.Venkateswara rao.

..... PETITIONER

AND

1 Commercial Tax officer, Convent Street, Vijayawada.
2 Regional Vigilance & Enforcement wing, Vijayawada.
3 Deputy Commissioner (CT), No.I, Division, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of writ of Mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the sixth schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of sixth schedule of the APGST Act read with G.O.Ms.No.910 Rev, dated 31-12-1999 and quash the provisional assessment order passed by the first respondent dated 25-09-2004 passed in Assessment No.3940/04-05 (upto 6/2004 only).

WRIT PETITION NO : 19192 of 2004:

Between:

M/s.Speed Road Agencies, D.No.12-6-1, Chinna Sattar Street,
Vijayawada, rep., by its Proprietor Sri L.Rama Rao

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No.I Division, Vijayawada.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of writ of mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Sixth Schedule of the APGST Act read with G.O.MS.NO.910 Rev.dt.31-12-1999 and quash the provisional assessment order passed by the first respondent dt.25-9-04 passed in Assessment No.3528/2004-05.

WRIT PETITION NO : 19193 of 2004:

Between:

M/s Speed Rod Agencies, D.No.12-6-1, Chinna Sattar Street,
Vijayawada, represented by its Proprietor Sri L.Rama Rao

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada
2 Regional Vigilance and Enforcement Wing, Vijayawada
3 Deputy Commissioner (CT), No.I Division, Vijayawada

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction particularly one in the nature of Writ of Mandamus declaring that all chemicals other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Sixth Schedule of the APGST Act read with G.O.Ms.No.910 Rev, dated 31-12-1999 and quash the provisional assessment No.3528/2003-04 or to pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

WRIT PETITION NO : 19194 of 2004:

Between:

M/s. Sri Shirdi Sai Enterprises,

D.No. 12-3-32, Peena Mohammad Street,
Tarapet, Vijayawada, represented by its Partner Sri A. Jayakrishna

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Vijayawada.
2 Regional Vigilance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner(CT), No. 1 Division, Vijayawada.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction particularly one in the nature of Writ of Mandamus declaring that all chemicals, other than those specified elsewhere, fall within the purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Sixth Schedule of the APGST Act read with G.O.Ms.No. 910 Rev, dated 31-12-1999 and quash the provisional assessment order passed by the first respondent dated 25-9-2004 passed in Assessment No. 3363/2004-05.

WRIT PETITION NO : 19195 of 2004

Between:

M/s. Sri Shidi Sai Enterprises, D.No. 12-3-32, Peena Mohammaed Street,
Tarapet, Vijayawada, Rep. by its Partner Sri A. Jayakrishna.

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street,
Vijayawada.
2 Regional Vigiglance and Enforcement Wing, Vijayawada.
3 Deputy Commissioner (CT), No.I Division,
Vijayawada.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ or order or direction particularly one in the nature of Writ of mandamus declaring that all chemicals, other than those specified elsewhere, fall within the

purview of Entry 9 of the Sixth Schedule and accordingly hold that all such chemicals are taxable at 8% under Item 9 of Sixth Schedule of the APGST Act read with G.O.Ms.ANo.910 Rev, dated 31-12-1999 and quash the provisional assessment order passed by the first respondent dated 25-09-2004 in Assessment No.3363/2003-04;

Counsel for the Petitioners: MR.S.KRISHNA MURTHY

(in all writ petitions)

Counsel for the Respondents: G.P. FOR COMMERCIAL TAX

(in all writ petitions)

The Court made the following

COMMON ORDER **(per the Hon'ble Sri Justice M.H.S. Ansari)**:

The instant writ petitions, raising identical questions, have been filed against the assessment orders.

The petitioners in these writ petitions, seek a direction that the product Calcium Carbide is liable to tax at the rate of 8%. When the writ petitions were filed

questioning the show cause notices, interim directions were issued by this Court, restraining the respondents from passing orders.

The writ petitions came to be filed against the issued show cause notices directly in this Court as according to the petitioners, the Sales Tax Appellate Tribunal in the case of ***Veeranjaneya Enterprises vs. State of Andhra Pradesh*** has held that Calcium Carbide does not fall under entry 9 of the Sixth Schedule "Dyes and Chemicals". The product Calcium Carbide though a chemical, would fall under the Seventh Schedule.

However, it is not in dispute before us that the State, in exercise of the powers conferred on it by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957, has issued directions to the effect that the rate of tax on the sale of 'Calcium Carbide' in the State, shall be at eight paise in the rupee, upto 30-09-2004 only, irrespective of its classification, under the said Act.

The copy of the aforesaid notification of G.O.Ms.No.1021 Revenue (CT.II), dated 13th December 2004, published in the Andhra Pradesh Gazette Part-I Extraordinary, bearing No.526, dated 18th December 2004, has been placed before us. As admittedly, in the case on hand, the period is prior to 30-09-2004. It has to be held in terms of the said Gazette that the rate of tax on the sale of 'Calcium Carbide' in the State shall be at 8%.

It has been brought to our notice that a conditional interim order was granted by this Court in these writ petitions.

Therefore, the petitioners shall be entitled to refund of the taxes deposited. While giving effect to the orders of the Government in the Gazette Notification No.526, dated

18th December 2004, it is hereby directed that the respondents shall consider the matter of the refund of the taxes deposited by the petitioners pursuant to the interim orders of this Court.

The writ petitions are accordingly allowed. No costs.

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M.H.S. ANSARI, J

_____

T.Ch. SURYA RAO, J

16th February, 2005

isn

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the Sixteenth day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

To

1. The Commercial Tax officer, Convent Street, Vijayawada.
2 The Regional Vigilance and Enforcement Wing, Vijayawada.
3 The Deputy Commissioner (CT), No.I Division, Vijayawada.

4. Two CCs to G.P. for Commercial Tax, High Court Buildings,

Hyderabad (OUT).

5. Two CD copies.